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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,061	01/12/2005	Juergen Wiker	3168	6655
7590	07/18/2006		EXAMINER	
Striker, Striker & Stenby 103 East Neck Road Huntington, NY 11743			MORGAN, EILEEN P	
			ART UNIT	PAPER NUMBER
			3723	
DATE MAILED: 07/18/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/521,061	WIKER, JUERGEN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eileen P. Morgan	3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 January 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1.) Certified copies of the priority documents have been received.  
 2.) Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3.) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1-12-05</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Specification***

The title of the invention is not descriptive and is misspelled. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Electric Portable Power Tool with Rotatable Guard.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear. Lines 2, 3, 5, recite 'having...'. What structure does this refer to? What has a collar, the clamping element, the guard, the housing? Line 6, 'which is provided on the machine housing' refers to what? 'and is coaxial' refers to what? Line 8, 'this collar' refers to 'the' collar? 'and fixed it in relation' is unclear. Last line, 'rotation positions' should be 'rotational'. Claim 2, line 3, clamp (15) should be 'collar'. Claim 4, last line, what is 'the clamp axis'? This lacks antecedent basis. Cl. 7, line 3, 'that is let into' is unclear. Line 4, 'the inner surface' lacks antecedent basis. The last 2 lines of claim 7 are totally unclear. 'the groove bottom' lacks antecedent basis. Cl. 8, line 2, 'the outer' lacks antecedent basis. Line 3, 'let into it' is unclear. Cl. 10, line 1, 'which has'

refer to what? Line 3, 'having', 'and having' refer to what? Cl. 12, line 3, 'the outside', line 4, 'the clamp axis' lack antecedent basis. Cls. 5 and 13, 'is preferably cut' is unclear and does not further limit the apparatus claim. Both claims, 'the spring steel' lack antecedent basis. Cl. 14, 'its inner surface' lacks antecedent basis.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,2,9,10,11are rejected under 35 U.S.C. 102(a) as being anticipated by DE 10124439.

DE'439 discloses a guard (1) for use with a portable tool (3) having a spindle extending from a housing (2) for a disk tool, wherein the guard is detachably connected to the housing by use of a clamp (16) having a clamping element (pivoting lever), wherein the clamp (16) which is connected to the guard via a semicircular flange is fastened around a collar (20) of the housing, coaxial with the spindle, via a releasable locking mechanism that comprises a toothed section (areas between 21) on the collar and a ratchet section (corresponding to toothed sections) on the clamp and is pressed into toothed section by a force spring mounted on pivotal lever.

Claims 1,10 are rejected under 35 U.S.C. 102(e) as being anticipated by Keller-6,464,573.

Keller discloses a guard (22) for a portable tool having a spindle with a collar that is engaged with a clamp of the guard having a clamping element (52) to allow guard to rotate at a selected position relative to the collar.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE'439, alone.

DE '439 discloses the invention, as mentioned above, but does not disclose the particulars of the teeth having steep flanks and shallow backs. However, it would have been obvious to one of ordinary skill in the art at time invention was made to modify the shape of the teeth to increase gripping force in order to more securely clamp guard onto housing of tool.

***Allowable Subject Matter***

Claims 4-8, 12-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eileen P. Morgan whose telephone number is 571.272.4488. The examiner can normally be reached on Monday-Thursday, 7am-3:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571.272.4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EM  
July 9, 2006



Eileen P. Morgan  
Primary Examiner